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2009 NOV -9 AM 10: 27

CLERK OF COURT
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON
FBI

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

REBECCA LYNN WINKER,

Debtor.

NO. 09-47273-PBS

MOTION FOR ORDER
CONFIRMING THAT NO STAY IS
IN EFFECT AND AUTHORIZING
CONTINUATION OF THIRD PARTY
LITIGATION

TO: Anita G. Manishan, Attorney for Debtor, Rebecca Winker;
TO: Scott Chapman, Attorney for Defendants, Robert Winker and Jane Doe Winker,
Husband and Wife, and Defendant Rebecca Winker (Downing vs.
Winker et al)

TO: Defendant Wade Goforth (Downing vs. Winker et al)

TO: Office of the United States Trustee;

DONALD W. DOWNING, JR., ("Downing") by and through his Attorney of Record,
SCOTT C. BROYLES, files this Motion for an Order Confirming That No Stay Is In Effect
And Authorizing Continuation of Third Party Litigation (the "Motion") wherein Donald W.
Downing, Jr., is the Plaintiff, herein after called **Downing**, and the Defendants are: Robert
Winker and Jane Doe Winker, *Husband and Wife*, and Rebecca Winker (above named
Debtor), *an unmarried person*, and Wade W. Goforth, *an unmarried person*, hereinafter

MOTION FOR ORDER CONFIRMING
THAT NO STAY IS IN EFFECT AND
AUTHORIZING CONTINUATION OF
THIRD PARTY LITIGATION - 1

Broyles & Laws, PLLC
901 Sixth Street
Clarkston, WA 99403
(509) 758-1636

1 referred to as **Winker et al.**

2 **I. BACKGROUND**

3 At all times relevant thereto, Downing was the purchaser of certain real property
4 situate in Asotin County, Washington, and Winker et al was the seller of said real property.
5 The transaction closed on May 21, 2004.

6 Winker et al, by and through signing a Seller's Disclosure Statement on March 17,
7 2004, represented to Downing that "the property was serviced by an on-site sewage system
8 (including pipes, tanks, drain fields, and all other component parts)".

9 That in August, 2007, Downing was notified that the property was, in fact, **not**
10 serviced by an on-site sewage system, but rather, was serviced by a septic tank and drain field
11 located off-site on adjacent property. Winker et al falsely represented the placement of the
12 sewage system to Downing.

13 Downing initiated litigation against Winker et al, including the above named Debtor,
14 Rebecca Winker, through filing and service of a Complaint in Superior Court of Washington
15 in Asotin County, Case No. 08-2-00314-6, hereinafter referred to as **the Litigation**, a copy
16 of which is attached hereto as Exhibit A and by reference incorporated herein.

17 Downing, while seeking to take no further action against Debtor, Rebecca Winker,
18 files this Motion to authorize the continuance of the Litigation against the remaining
19 Defendants in the Litigation.

20 **II. LEGAL AUTHORITY**

21 11 USC 362(c)(4)(A)(ii) provides: on request of a party in interest, the Court shall
22 promptly enter an order confirming that no stay is in effect.

23 Local Bankruptcy Rule 4001-1(b)(1) provides:

24 A party in interest desiring an order confirming that no stay is in effect
25 pursuant to 11 USC 362(c)(4)(A)(ii), shall file a motion and shall give ten (10)
26 days notice and hearing to the Master Mailing List in accordance with (Local
27 Bankruptcy Rule) 2002-1.

MOTION FOR ORDER CONFIRMING
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THIRD PARTY LITIGATION - 2

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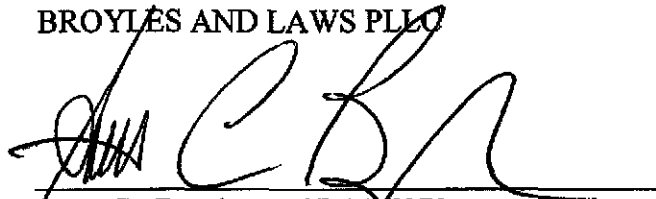
III. DISCUSSION

Pursuant to 11 USC 362(c)(4)(A)(ii), as incorporated by LBR 4001-1(b)(1), Downing is entitled to request and obtain an order confirming that no stay is in effect. Further even without the authorization provided by LBR 4001-1(b)(1) or 11 USC 362(c)(4)(A)(ii), Downing would be permitted to bring suit against the remaining Defendants in the civil case, Downing vs Winker et al, because the stay does not operate to bar litigation against third parties.

This Motion is based upon LBR 4001-1(b)(1), 11 USC 362(c)(4)(A)(ii), and the records and files herein.

DATED this 5th day of November, 2009.

BROYLES AND LAWS PLLC



Scott C. Broyles, WSBA#6070
Attorney for Donald W. Downing, Jr.

1 CERTIFICATE OF SERVICE

2
3 I HEREBY CERTIFY that on the 5th day of Nov 2009, I caused to be served a true
4 and correct copy of the foregoing, by the method indicated below, and addressed to the
5 following:

6
7 X Hand-Delivered by Valley Messenger Service
8 TO:

9
10 SCOTT CHAPMAN
11 RANDALL, BLAKE & COX, PLLC
12 P O BOX 4402
13 LEWISTON ID 83501

14
15 X United States Mail, Postage Prepaid

16
17 Wade Goforth
18 15026 NE 1st Avenue
19 Vancouver WA 98685

20
21 Charles D. Carlson
22 P O Box 5279
23 Vancouver WA 98668-5279

24
25 United States Trustee
26 700 Stewart St Ste 5103
27 Seattle WA 98101-4438

28
29 CitiMortgage
30 P O 689196
31 Des Moines IA 50368-9196

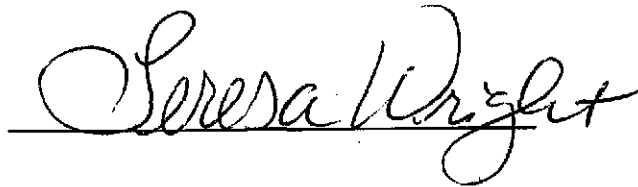
32
33 U S Bank
34 P O Box 5229
35 Cincinnati OH 45201-5529

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MOTION FOR ORDER CONFIRMING
THAT NO STAY IS IN EFFECT AND
AUTHORIZING CONTINUATION OF
THIRD PARTY LITIGATION - 4

Broyles & Laws, PLLC
901 Sixth Street
Clarkston, WA 99403
(509) 758-1636

1 Rebecca Lynn Winker
2 C/O Anita G Manishan
3 Attorney at Law
4 520 SW Yamhill St Ste 420
5 Portland OR 97204-1306
6

7 Gary K. Kahn, Esq
8 P O Box 86100
9 Portland OR 97286-0100
10
11
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17

A handwritten signature in cursive script, reading "Seresa Wright", is written over a horizontal line.

MOTION FOR ORDER CONFIRMING
THAT NO STAY IS IN EFFECT AND
AUTHORIZING CONTINUATION OF
THIRD PARTY LITIGATION - 5

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CONFORMED COPY

REC'D & FILED
OFFICE OF CO. CLERK
ASOTIN COUNTY, WA

DEC 11 2008

[Signature]
CLERK DEPUTY

SUPERIOR COURT OF WASHINGTON IN AND FOR ASOTIN COUNTY

DONALD W. DOWNING, JR.,
An unmarried person,

Plaintiff,

v.

ROBERT WINKER and JANE DOE
WINKER, and REBECCA . WINKER, an
unmarried person, and WADE W.
GOFORTH, an unmarried person,

Defendants.

NO. 08 - 2 00314 6

COMPLAINT

I. FACTS

COMES NOW, Plaintiff, DONALD W. DOWNING, JR., an unmarried person, and
for cause of action and alleges as follows:

1. Plaintiff, DONALD W. DOWNING, JR., is an unmarried person and a
resident of Asotin County, State of Washington;

2. Defendants, ROBERT WINKER, and JANE DOE WINKER, are residents of
Nez Perce County, Washington;

3. That, on or about, May 21, 2004, the Plaintiff did purchase from the Defendant

1 that certain real property more particularly described as follows:

2 PARCEL I

3 The South half of the Northwest Quarter of Northeast Quarter of the Southeast
4 Quarter (S1/2NW1/4NE1/4SE1/4) of Section 29 of Township 8 North, Range
5 45 East of the Willamette Meridian, Asotin County, Washington
6

7 PARCEL II

8
9 Together with and subject to a non-exclusive easement for a private road for
10 use in common with the Grantors, their successors and assigns, on, over and
11 across a roadway 30 feet in width, lying 15 feet on either side of the centerline
12 of the existing roadway.
13

14 SUBJECT TO

15
16 This conveyance is subject to Covenants, conditions, restrictions and
17 easements, if any, affecting title, which may appear in the public record,
18 including those shown on any recorded plat or survey.
19

20 Assessor's Property Tax Parcel/Account Number 1-056-00-090-0011 &
21 7-008-45-029-3140
22

23 4. That in August, 2007, discovered that the septic tank and drain field were
24 located on adjacent property and not on his property.

25 5. That at the time of the sale, Defendant completed a Seller Disclosure
26 Statement, in particular, Section I.3.A and I.3.G, affirming that the property was served by an
27 on-site sewage system and did indicate that the on-site sewage system including the drain
28 field was located entirely within the the boundaries of the property that Defendant was selling
29 to Plaintiff. See page 2 of the Sellers Disclosure Statement attached hereto and incorporated
30 by reference.

31 6. That Plaintiff will incur costs of approximately \$14,000.00 to relocate the
32 septic system and drain field to within the boundaries of the property.
33

1 WHEREFORE, Plaintiff prays:

2 1. Recovery of the damages in the amount to relocate the septic system within the
3 boundaries of the property, or in the alternative, in the amount of the diminution value as of
4 the result of the breach of the warranties contained in the Seller Disclosure Statement, all in
5 amounts to be proven at trial.

6 2. For costs, attorneys fees and any and further relief that the Court may deem
7 warranted upon hearing.

8
9 DATED this 9th day of December, 2008.

10
11
12
13 Scott C. Broyles
14 SCOTT C. BROYLES WSBA #6070
15 Broyles & Laws PLLC
16 Attorney for Plaintiffs

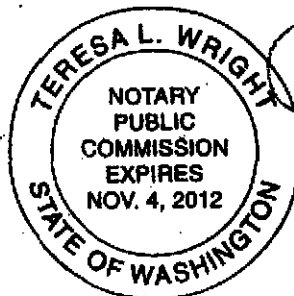
17 STATE OF WASHINGTON)
18) ss.
19 County of Asotin)

20 DONALD DOWNING, being first duly sworn upon oath, deposes and says:

21
22 That I am the Plaintiff herein, that I have read the foregoing, know the contents
23 thereof, and believe the same to be true.

24 Donald Downing
25 DONALD DOWNING

26 SUBSCRIBED AND SWORN TO before me this 9th day of December,
27 2008.



Teresa L. Wright
Notary Public in and for the State of Washington
Residing at Clarkston, Washington Le. J. Sten 10
My commission expires: 11/4/2012

Broyles & Laws, PLLC
901 Sixth Street
Clarkston, WA 99403
(509) 758-1636

Seller Disclosure
Statement



SELLER DISCLOSURE STATEMENT

SELLER: Robert Winker

† To be used in transfers of residential real property, including multi-family dwellings up to four units; new construction; condominiums not subject to a public offering statement, certain timeshares, and manufactured and mobile homes. See RCW Chapter 64.06 and Section 43.22.432 for further explanations.

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any asterisked (*) item(s), please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written purchase and sale agreement between Buyer and Seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT

CITY Anastasia, COUNTY W.D. ("THE PROPERTY")

OR AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller ☐ is/ ☐ is not occupying the property.

I. SELLER'S DISCLOSURES:

* If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

A. Do you have legal authority to sell the property? If not, please explain.

*B. Is title to the property subject to any of the following?

- (1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate

*C. Are there any encroachments, boundary agreements, or boundary disputes?

*D. Are there any rights of way, easements, or access limitations that may affect Buyer's use of the property?

*E. Are there any written agreements for joint maintenance of an easement or right of way?

*F. Is there any study, survey project, or notice that would adversely affect the property?

*G. Are there any pending or existing assessments against the property?

*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

*I. Is there a boundary survey for the property?

*J. Are there any covenants, conditions, or restrictions which affect the property?

PLEASE NOTE: Covenants, conditions, and restrictions which purport to forbid or restrict the conveyance, encumbrance, occupancy, or lease of real property to individuals based on race, creed, color, sex, national origin, familial status, or disability are void, unenforceable, and illegal. RCW 49.60.224.

SELLER'S INITIALS: W

DATE: 3-17-04

SELLER'S INITIALS: _____

DATE: _____

SELLER DISCLOSURE STATEMENT

2. WATER

A. Household Water

- (1) The source of water for the property is: ☐ Private or publicly owned water system
☒ Private well serving only the subject property *☐ Other water system
 *If shared, are there any written agreements? _____
- *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source? _____
- *(3) Are there any known problems or repairs needed? _____
- (4) During your ownership, has the source provided an adequate year round supply of potable water? _____
 If no, please explain: _____
- *(5) Are there any water treatment systems for the property? _____
 If yes, are they: ☐ Leased ☐ Owned

B. Irrigation

- (1) Are there any water rights for the property, such as a water right, permit, certificate, or claim? _____
- *(a) If yes, have the water rights been used during the last five-years? _____
- *(b) If so, is the certificate available? _____

C. Outdoor Sprinkler System

- (1) Is there an outdoor sprinkler system for the property? _____
- *(2) If yes, are there any defects in the system? _____
- *(3) If yes, is the sprinkler system connected to irrigation water? _____

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- ☐ Public sewer system ☒ On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
☐ Other disposal system
 Please describe: _____

B. If public sewer system service is available to the property, is the house connected to the sewer main?

If no, please explain: _____

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

- *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction? _____
- (2) When was it last pumped? _____
- *(3) Are there any defects in the operation of the on-site sewage system? _____
- (4) When was it last inspected? _____

By whom: _____

(5) For how many bedrooms was the on-site sewage system approved? _____ bedrooms

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system?

If no, please explain: _____

*F. Have there been any changes or repairs to the on-site sewage system?

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property?

If no, please explain: _____

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

If yes, please explain: _____

SELLER'S INITIALS: _____

DATE: 3-12-04

SELLER'S INITIALS: _____

DATE: _____

SELLER DISCLOSURE STATEMENT

NOTICE: IF THIS SELLER DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4 (STRUCTURAL) OR ITEM 5 (SYSTEMS AND FIXTURES).

4. STRUCTURAL

- | | YES | NO | DON'T KNOW | |
|--|-------------------------------------|-------------------------------------|--------------------------|-----|
| *A. Has the roof leaked? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 114 |
| *B. Has the basement flooded or leaked? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 115 |
| *C. Have there been any conversions, additions or remodeling? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 116 |
| *(1) If yes, were all building permits obtained? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 117 |
| *(2) If yes, were all final inspections obtained? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 118 |
| D. Do you know the age of the house? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 119 |
| If yes, year of original construction: <u>1982</u> | | | | 120 |
| *E. Has there been any settling, slippage, or sliding of the property or its improvements? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 121 |
| *F. Are there any defects with the following: (If yes, please check applicable items and explain.) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 122 |
| <input type="checkbox"/> Foundations | | | | 123 |
| <input type="checkbox"/> Decks | | | | 124 |
| <input type="checkbox"/> Chimneys | | | | 125 |
| <input type="checkbox"/> Interior Walls | | | | 126 |
| <input type="checkbox"/> Doors | | | | 127 |
| <input type="checkbox"/> Windows | | | | 128 |
| <input type="checkbox"/> Ceilings | | | | 129 |
| <input type="checkbox"/> Slab Floors | | | | 130 |
| <input type="checkbox"/> Pools | | | | 131 |
| <input type="checkbox"/> Hot Tub | | | | 132 |
| <input type="checkbox"/> Sidewalks | | | | 133 |
| <input type="checkbox"/> Outbuildings | | | | 134 |
| <input type="checkbox"/> Garage Floors | | | | 135 |
| <input type="checkbox"/> Walkways | | | | 136 |
| <input type="checkbox"/> Siding | | | | 137 |
| <input type="checkbox"/> Other | | | | 138 |
| *G. Was a structural pest or "whole house" inspection done? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 139 |
| If yes, when and by whom was the inspection completed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 140 |
| H. During your ownership, has the property had any wood destroying organisms or pest infestations? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 141 |
| I. Is the attic insulated? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 142 |
| J. Is the basement insulated? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 143 |

5. SYSTEMS AND FIXTURES

- | | | | | |
|--|--------------------------|-------------------------------------|--------------------------|-----|
| *A. If any of the following systems or fixtures are included with the transfer, are there any defects? | | | | 144 |
| If yes, please explain: | | | | 145 |
| Electrical system, including wiring, switches, outlets, and service | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 146 |
| Plumbing system, including pipes, faucets, fixtures, and toilets | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 147 |
| Hot water tank | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 148 |
| Garbage disposal | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 149 |
| Appliances | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 150 |
| Sump pump | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 151 |
| Heating and cooling systems | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 152 |
| Security system <input type="checkbox"/> Leased <input type="checkbox"/> Owned | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 153 |
| Other: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 154 |
| *B. If any of the following fixtures or property are included with the transfer, are they leased? | | | | 155 |
| (If yes, please attach copy of lease.) | | | | 156 |
| Security System | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 157 |
| Tanks (type): | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 158 |
| Satellite dish | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 159 |
| Other: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 160 |

SELLER'S INITIALS: NU

DATE: 3-17-04

SELLER'S INITIALS: _____

DATE: _____

161

SELLER DISCLOSURE STATEMENT

YES	NO	DON'T KNOW	
			156
			157

6. COMMON INTERESTS

A. Is there a Home Owners' Association?

Name of Association _____

B. Are there regular periodic assessments?

\$ _____ per ☐ month ☐ years

☐ Other: _____

*C. Are there any pending special assessments?

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

*A. Have there been any drainage problems on the property?

*B. Does the property contain fill material?

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

D. Is the property in a designated flood plain?

E. Has the local (city or county) planning agency designated your property as a "frequently flooded area"?

*F. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

*G. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property?

*H. Has the property ever been used as an illegal drug manufacturing site?

*I. Are there any radio towers in the area that may cause interference with telephone reception?

8. LEAD BASED PAINT (Applicable if the house was built before 1978.)

A. Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain). _____

☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

B. Records and reports available to the Seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below). _____

☒ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

9. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

*A. Did you make any alterations to the home?

If yes, please describe the alterations: _____

*B. Did any previous owner make any alterations to the home?

If yes, please describe the alterations: _____

*C. If alterations were made, were permits or variances for these alterations obtained?

10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

SELLER'S INITIALS: qu

DATE: 3-17-04

SELLER'S INITIALS: _____

DATE: _____

SELLER DISCLOSURE STATEMENT

B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold real estate licensees harmless from and against any and all claims that the above information is inaccurate. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Date: 3-17-04 Date: _____
Seller: Robert W. [Signature] Seller: _____

II. BUYER'S ACKNOWLEDGEMENT

Buyer hereby acknowledges that:

- A. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050 (2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).
- F. If the house was built prior to 1978, Buyer acknowledges receipt of the pamphlet *Protect Your Family From Lead in Your Home*.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE: 5-10-04 DATE: _____
BUYER: [Signature] BUYER: _____

BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED REAL PROPERTY TRANSFER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

If the answer is "Yes" to any asterisked (*) items, please explain below (use additional sheets if necessary). Please refer to the line number(s) of the question(s).

SELLER'S INITIALS: rw DATE: 3-17-04 SELLER'S INITIALS: _____ DATE: _____

Statutory Warranty
Deed



AFTER RECORDING MAIL TO:

276609

Name _____

Address _____

City, State, Zip _____

Filed for Record at Request of:

RECORDED

MAY 28 2004

TIME 2:45 PM
REQUEST OF THE AMERICAN TITLE CO.
ELAINE JOHNSON, ASOTIN COUNTY AUDITOR

CL23168

LP8-10 7/97

STATUTORY WARRANTY DEED

THE GRANTOR(S) Robert Wayne Winker, a married man, as his sole and separate property, as to an undivided 1/2 interest and Rebecca L. Winker, an unmarried woman and Wade W. Goforth, a single man, as to an undivided 1/2 interest for and in consideration of Ten Dollars (\$10.00) and other valuable consideration in hand paid, conveys, and warrants to Donald W. Downing, Jr. an unmarried man,

the following described real estate, situated in the County of Asotin, state of Washington:

PARCEL I:

The South half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (S1/2 NW1/4NE1/4SE1/4) of Section 29 of Township 8 North, Range 45 East of the Willamette Meridian, Asotin County, Washington.

PARCEL II:

Together with and subject to a non-exclusive easement for a private road for use in common with the Grantors, their successors and assigns, on, over and across a roadway 30 feet in width, lying 15 feet on either side of the centerline of the existing roadway.

Subject to:

This conveyance is subject to Covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

Assessor's Property Tax Parcel/Account Number: 1-056-00-090-0011 & 7-008-45-029-3140

DATED: 5-21-2004

Robert Wayne Winker
Robert Wayne Winker

Rebecca L. Winker
Rebecca L. Winker

Wade W. Goforth
Wade W. Goforth

REAL ESTATE EXCISE TAX

PAID \$ 948.60 DATE 5-28-04

RECEIPT No. 37701
ASOTIN COUNTY TREASURER

BY [Signature]
SALE PRICE 12,000.00

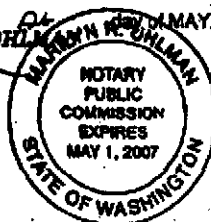
STATE OF WASHINGTON

COUNTY OF ASOTIN

On this day personally appeared before me ROBERT WAYNE WINKER to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 31 day of MAY, 2004.

Marilyn R. Uhlman
Notary Public in and for the State of Washington
Residing at: CLARKSTON
My appointment expires: 05/01/07




STATE OF: Oregon

ss.

COUNTY OF: Multnomah

On this day personally appeared before me WADE W. GOFORTH to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24th day of MAY, 2004.


Notary Public in and for the State of Washington
Residing at: Portland
My appointment expires: 6/30/04



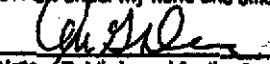
STATE OF: Oregon

ss.

COUNTY OF: Multnomah

On this day personally appeared before me REBECCA L. WINKER to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that SHE signed the same as HER free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24th day of MAY, 2004.


Notary Public in and for the State of Washington
Residing at: Portland
My appointment expires: 6/30/04



Correspondence from
Downing to Winker



November 26, 2007

From: Don Downing
POB 212
Anatone, Wa 99401

To: Bob Winker
2007 Ripon Ave
Lewiston, Idaho 83501

COPY

Dear Bob,

I have spoken to an attorney regarding the issue of my septic system not being on the property I purchased from you near Anatone, Washington. As you know the fact that the septic system is not on that property is contrary to statements you made in the "Seller's Disclosure Form" which you signed before I agreed to purchase this property. I assure you that I would not have purchased that property had I known of this issue.

My attorney advised me to send you a certified letter requesting that you correct this situation immediately. Please consider this letter such a request.

My attorney also advised me that, if it is necessary for me to bring a lawsuit against you, it is very likely the court will find in my favor and require you to pay for a new septic system that meets the current Asotin county codes AS WELL AS my attorney's fees and other court costs.

I urge you to consult an attorney of your own choosing to verify these facts.

I assure you that, if you do not take prompt action on this matter, a lawsuit will follow and your options for resolving this issue will become very limited.

Sincerely,

Don Downing



August 13, 2008

FROM: Don Downing
POB 212
Anatone, WA 99401

TO: Bob Winker
2007 Ripon Ave
Lewiston, Idaho 83501

COPY

Mr Winker,

I am about to proceed with a lawsuit against you regarding the matter of the septic system not being on the property I purchased from you at 5000 Mill road Anatone, Washington contrary to statements you made in the sellers disclosure form prior to my purchase of said property. I have written to you about this matter before as referenced in my letter to you of November 26th 2007. This matter has also been the subject of letters by my attorney to your attorney in recent weeks.

There has been a short delay in filing of this lawsuit while I arranged for funds for my attorney's retainer. I now have these funds in hand and will render them to my attorney next week.

I suspect that, contrary to statements you made to me when I was trying to locate the septic tank for maintenance, you were personally responsible for the placement of the septic tank and drain field and that no third party was involved beyond providing the equipment and labor to dig the septic tank pit and drain field ditch. As such it would have been your sole responsibility to situate the septic tank and drain field entirely upon the property I purchased from you. To this end I want to make it clear that have instructed my attorney to subpoena your ex-wife to testify under oath as to the facts in this matter.

I also want to make it clear that I will be requesting the court to award me my attorney's fees in addition to the costs of replacing the current septic system with one that satisfies the legal requirements of the Asotin county Health Department and one that is entirely upon the property I purchased from you.

I suggest that you immediately begin the process of replacing this septic system. You will NOT have another opportunity to do so once legal proceedings have begun against you.

Don Downing

